

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

LIBERTY HILL HOUSING CORPORATION,

Petitioner-Appellant,

v

CITY OF LIVONIA,

Respondent-Appellee.

Supreme Court No. 131531

Court of Appeals  
Docket No. 258752

Michigan Tax Tribunal  
Docket No. 298536

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**RESPONDENT-APPELLEE CITY OF LIVONIA'S  
REPLY TO AMICUS BRIEF OF PHEASANT RING**

**FILED**

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## LAW AND ARGUMENT

In examining whether the petitioner therein qualified as a “charitable institution” within the meaning of MCL 211.7o, this Honorable Court in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006) reasoned:

. . . we bear in mind the time-honored rules of statutory construction, under which our paramount concern is identifying and effecting the Legislature’s intent. *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 665; 378 NW2d 737 (1985). And where a tax exemption is sought, we recall that because tax exemptions upset the desirable balance achieved by equal taxation, they must be narrowly construed. *Id.*; see also *Michigan Baptist Homes & Dev Co v City of Ann Arbor*, 396 Mich 660, 669-670; 242 NW2d 749 (1976).

*Wexford, supra* at 204.

Although the panel in *Pheasant Ring a/k/a Homes for Autism v Waterford Twp*, 272 Mich App 436; 726 NW2d 741 (2006) cited *Wexford, supra*, it did not correctly follow and apply its reasoning and holding. In rejecting the Township’s contention that Pheasant Ring does not occupy the property because the location of its offices is not physically on the property at issue and rents the property to tenants, the Court therein reasoned:

. . . This interpretation of the requirements is too narrow and restrictive. . . .

*Pheasant Ring, supra* at 442. The *Pheasant Ring* Court ignored the principle that tax exemptions must be narrowly construed. *Wexford, supra* at 204.

Moreover, the *Pheasant Ring* Court glossed over the third factor of the six (6) factor test carefully outlined in *Wexford, supra* at 215. If the *Pheasant Ring* Court had closely focused on the third factor, it would have concluded that Pheasant Ring discriminates by offering its services only to those who are able to afford them, apparently operating in the same manner as does Liberty Hill.

Twenty-five years ago this Honorable Court rejected a claim for tax exemption sought by Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc., finding that the residents therein who were making rental payments for apartments were not receiving a “gift” within the meaning of the statute. The recent holding in *Wexford, supra* does not overrule *Retirement Homes v Sylvan Twp*, 416 Mich 340; 330 NW2d 682 (1982). The *Wexford* opinion, in part, relies on the reasoning in *Retirement Homes*. *Wexford, supra* at 211-212. Rejecting the claim of charitable exemption, the *Retirement Homes* Court reasoned:

The question presented can thus be rephrased: Does Retirement Homes operate the apartments in such a way that there is a “gift” for the benefit of “the general public without restriction” or “for the benefit of an indefinite number of persons”?

We conclude that there is no “gift” for the benefit of an indefinite number of persons or for the benefit of the general public without restriction in the operation of the apartments. The monthly fee is designed to cover all operating costs as well as to recover the construction costs of the apartments. **While it does not appear that the apartments are operated for a profit,<sup>FN15</sup> neither does it appear that the residents receive any significant benefit that they do not pay for. There is no “gift” to the residents.**

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FN15. A corporation does not qualify for a tax exemption merely because it is structured to be non-profit and in fact makes no profit. By the same token, a non-profit corporation will not be disqualified for a charitable exemption because it charges those who can afford to pay for its services as long as the charges approximate the cost of the services. *Michigan Sanitarium & Benevolent Ass’n v Battle Creek*, 138 Mich 676, 683; 101 NW 855 (1904); *Auditor General v RB Smith Memorial Hospital Ass’n, supra*, 293 Mich p 39, 291 NW 213; *Gull Lake Conference v Ross Twp, supra*.

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*Retirement Homes, supra*, 349-350 (emphasis added).

The *Wexford* Court concluded by opining:

**Whether an institution is a charitable institution within the meaning of MCL 211.7o is a fact-specific question that requires examining the claimant’s overall purpose and the way in which it fulfills that purpose.** The determination will rarely, if ever, rest on one specific fact, such as the

percentage of monetary value of services given for free. Because the Tax Tribunal and the Court of Appeals misapplied existing law by erroneously narrowing the focus of their inquiry to the value of the free medical care petitioner rendered in the given tax years, they erroneously denied the requested exemption. Petitioner is a charitable institution because it exists for, and carries out, the purpose of giving a gift for the benefit of an indefinite number of persons by providing free and below-cost medical care to anyone who needs it without qualification, and it realizes no pecuniary gain from its activities. As such, it is entitled to an ad valorem tax exemption.

*Wexford, supra* at 221-222 (emphasis added).

Liberty Hill and Pheasant Ring are not providing a gift for the benefit of an indefinite number of persons. Liberty Hill and Pheasant Ring, upon information and belief, are charging market rent in exchange for allowing tenants to occupy the homes owned by the corporations. Neither organization should be exempt from paying real property taxes. Following and applying *Wexford, supra*, a different result could be reached in *Liberty Hill* and *Pheasant Ring*. The *Wexford* Court stressed that MCL 211.7o requires a fact-specific inquiry into the claimant's stated purpose and how that purpose is being fulfilled. In *Liberty Hill*, the Petitioner-Appellant's stated purpose is to "lease homes to individuals with developmental disabilities." (2003 Nonprofit Corporation Information Update, C.I.D. 796399, Liberty Hill Housing Corp.) The City is not familiar with the factual record developed in the *Pheasant Ring* case.

Looking again at the subject statute, it is noteworthy that in late 2006, the statute was amended with an effective date of January 10, 2007. 2006 PA 681. The City maintains that subsection (1) of the amended statute still does not afford relief from taxation to either Petitioner-Appellant or Pheasant Ring.

The statute, as amended, now provides in relevant subsections:

Sec. 7o. (1) Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.

\* \* \*

(8) Real and personal property owned and occupied by a nonprofit corporation that meets all of the following conditions is exempt from the collection of taxes under this act:

(a) The nonprofit corporation is exempt from taxation under section 501(c)(3) of the internal revenue code, 26 USC 501.

(b) The nonprofit corporation meets 1 of the following conditions:

(i) Is a skilled nursing facility or home for the aged, licensed under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, or is an adult foster care facility licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737. As used in this subparagraph:

(A) "Adult foster care facility" means that term as defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703.

(B) "Home for the aged" means that term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(C) "Skilled nursing facility" means that term as defined in section 20109 of the public health code, 1978 PA 368, MCL 333.20109.

(ii) Provides housing, rehabilitation services, diagnostic services, medical services, or therapeutic services to 1 or more disabled persons. As used in this subparagraph, "disabled person" means that term as defined in section 7d.

(c) The nonprofit corporation meets either of the following conditions:

(i) The real and personal property of the nonprofit corporation was being treated as exempt from the collection of all taxes under this act on the effective date of the amendatory act that added this subsection.

(ii) The real and personal property of the nonprofit corporation had been treated as exempt from the collection of all taxes under this act on December 31, 2004 and there has been no transfer of ownership of that property during the period of time beginning the last day the property was treated as exempt until the effective date of the amendatory act that added this subsection. As used in this sub-subparagraph, "transfer of ownership" means that term as defined in section 27a.

(9) If real or personal property owned and occupied by a nonprofit corporation is not eligible for an exemption under subsection (8), that nonprofit corporation is not precluded from applying for exemption under subsection (1).

Subsection (1) has been modified only to correct a perceived grammatical flaw. The controversial language “owned and occupied” remains in place. Moreover, the phrase “nonprofit charitable institution” remains in place. As discussed in the City’s supplemental brief filed on March 9, 2007, Petitioner-Appellant is not an “institution.” The legislature obviously had the opportunity to amend the language but saw fit to leave it as is.

Subsection (8) has been added. Petitioner-Appellant does not qualify for an exemption under subsection (8) because Petitioner-Appellant does not fit the criteria set forth in subpart (c); Petitioner-Appellant was not being treated as exempt on 1/10/07 and Petitioner-Appellant was not being treated as exempt on 12/31/04. In other words, Petitioner-Appellant is not eligible to be “grandfathered” within the statute’s purview. Pheasant Ring might qualify for an exemption under subsection (8)(c)(i) if the lower court’s decision in *Pheasant Ring, supra* is not reversed.

Subsection (9) merely refers the reader back to subsection (1). Subsection (9) adds nothing of substance to the statute. Liberty Hill did not qualify for an exemption under the previous version of subsection (1) and remains ineligible under the amended version.

### **CONCLUSION AND RELIEF REQUESTED**


WHEREFORE, for the reason that the lower court correctly ruled that Petitioner-Appellant’s property was not exempt from taxation, the decision therein should be affirmed and leave to appeal denied.



WHEREFORE, for the further reason that the lower court incorrectly ruled that *Pheasant Ring* was entitled to an exemption pursuant to MCL 211.7o, the decision therein should be reversed.

Respectfully submitted,

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